

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BEATRICE FOWLER and DEPARTMENT OF JUSTICE,
BUREAU OF PRISONS, Jonesboro, GA

*Docket No. 01-1061; Submitted on the Record;
Issued December 19, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether appellant was entitled to compensation for total disability for the period December 28, 1999 through January 14, 2000, causally related to her accepted employment-related condition of low back strain.

On November 16, 1999 appellant, then a 39-year-old accounting technician, filed a traumatic injury claim alleging that on November 12, 1999 she pulled the lower muscles of her back while demonstrating self-defense to a coworker at work. The Office of Workers' Compensation Programs accepted appellant's claim for low back strain on January 21, 2000.

On September 29, 2000 appellant submitted a CA-7, claim for compensation, to the Office dated August 15, 2000 to repurchase leave for the period of December 28, 1999 through January 14, 2000. Appellant also submitted form reports including attending physician's reports from Dr. Douglas Epps, a Board-certified family practitioner, dated December 2, 1999 and January 6, 2000, which indicated that appellant could resume work on January 18, 2000 due to the accepted low back strain sustained on November 12, 1999.

On November 9, 2000 the Office informed appellant that it would defer compensation payment at that time, as the Office had no medical documentation to establish disability during the claimed time period. The Office allotted appellant 30 days within which to submit such medical documentation; however, no evidence was submitted.

By decision dated January 25, 2001, the Office denied appellant's claim for 112 hours of sick leave buy back for the period December 28, 1999 through January 14, 2000, finding that it was not supported by the medical evidence.

The Board finds that appellant has failed to establish that she was entitled to compensation for total disability during the period December 28, 1999 through January 14, 2000.

A person who claims benefits under the Federal Employees' Compensation Act has the burden of proof in establishing the essential elements of his or her claim, including the fact that an injury occurred in the performance of duty as alleged and that disability for employment was sustained as a result thereof.¹

In the instant case, appellant submitted form reports in which Dr. Epps listed that appellant sustained the accepted employment injury on November 12, 1999 and that she would be able to resume work on January 18, 2000. Dr. Epps did not provide any rationale or opinion on causal relationship, nor was the claimed period of total disability identified. Although appellant established that she sustained low back strain on November 12, 1999, she did not establish that the injury resulted in total disability for employment during the period December 28, 1999 through January 14, 2000.² Consequently, these reports are insufficient to establish that appellant was totally disabled for employment during the period December 28, 1999 through January 14, 2000, such that she would be entitled to leave buy back.

Appellant was advised that she needed to submit rationalized medical evidence based upon objective findings during a physical examination, identifying total disability for the period claimed; however, she failed to submit such rationalized medical evidence for the period December 28, 1999 through January 14, 2000. Accordingly, she has failed to meet her burden of proof to establish total disability for work during that period.

¹ See *Robin L. Brainard*, 43 ECAB 329 (1991); *Dean E. Pierce*, 40 ECAB 1249 (1989); *Daniel R. Hickman*, 34 ECAB 1220 (1983).

² As used in the Act the term "disability" means incapacity, because of employment injury, to earn the wages that the employee was receiving at the time of injury. *Richard T. DeVito*, 39 ECAB 668 (1988); *Frazier V. Nichol*, 37 ECAB 528 (1986); *Elden H. Tietze*, 2 ECAB 38 (1948); 20 C.F.R. § 10.5(17). Disability is thus not synonymous with physical impairment, which may or may not result in an incapacity to earn wages; see *Fred Foster*, 1 ECAB 21 at 24-25 (1947) (finding that the Act provides for the payment of compensation in disability cases upon the basis of the impairment in the employee's capacity to earn wages, and not upon physical impairment as such).

The decision of the Office of Workers' Compensation Programs dated January 25, 2001 is affirmed.

Dated, Washington, DC
December 19, 2001

Michael J. Walsh
Chairman

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member